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Pillsbury Winthrop LLP
1100 New York Avenue, N.W.
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Washington, DC 20005-3918

In re Application of REVELL et al
U.S. Application No.: 09/673,139
Int. Application No.: PCT/GB99/01170
Int. Filing Date: 16 April 1999
Priority Date: 17 April 1998
Attorney Docket No.: 277860
For: BONE IMPLANT

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DECISION

This is in response to applicants' "Petition to Revive" filed 12 June 2001, which is being treated as a petition under 37 CFR 1.181 to withdraw a holding of abandonment. No petition fee is due.

BACKGROUND

On 16 April 1999, applicants filed international application PCT/GB99/01170, which claimed priority of an earlier United Kingdom application filed 17 April 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 28 October 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 15 November 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 October 2000.

On 11 October 2000, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, authorization to charge the basic national fee required by 35 U.S.C. 371(c)(1).

On 03 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed along with a

surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty (30) months from the priority date.

On 12 June 2001, applicants filed the present petition along with an executed declaration. The petition states that applicants never received the Notification of Missing Requirements.

DISCUSSION

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicants' representative has provided the required statement.

With regard to item (2) above, applicants' representative has not provided the required statement.

With regard to item (3) above, applicants' representative has submitted a docket listing for the present application which shows does not show receipt of a Notification of Missing Requirements. This docket listing is insufficient. Applicants' representative should supply a docket record which lists responses due to the USPTO on 03 December 2000 and 04 December 2000 (03 December 2000 was a Sunday) for all cases handled by the representative's firm, or if such a docket record is unavailable, for all cases handled by applicants' representative. This docket record must illustrate the absence of any listing of a response due to a Notification of Missing Requirements.

CONCLUSION

Because applicants have failed to satisfy items (2) and (3) above, the petition is **DISMISSED** without prejudice.

If reconsideration on the merits of this decision is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No petition fee is due.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614

Facsimile: 703-308-6459